

1 in the HDO, we think that those facts are all not disputed.  
2 And we can quickly reach stipulations.

3 Now, I realize that the language of the stipulation  
4 might be, there might be some negotiation there, how it's  
5 colored. But that's fine. But if a certain fact is in the  
6 HDO, and it's not, and Entercom's not able to stipulate to  
7 that, we will need to move forward with discovery.

8 Because it could be a massive set of documents that  
9 we have to review in time to determine what we, with for  
10 example, our depositions.

11 JUDGE SIPPEL: I'm just a phone call away. In  
12 fact, you won't have to pay for it. That's easy to keep. I  
13 keep coming back to this. We keep repeating the same things  
14 over, and over, and over again.

15 I told you what I'm going to want. I'm going to  
16 want a status report by the, at the end of January. I'll set  
17 the date, and everything like that. And in that first status  
18 report an estimate.

19 First, comments as to how well the procedure is  
20 moving along, and when it's anticipated it will end. And we  
21 can go from there.

22 Plus you've got all these, you know, these holidays  
23 in between here, and everything. So, you know, go home and  
24 enjoy the turkey. Mr. Couzens.

25 MR. COUZENS: All right. The Hearing Designation

1 Order 83A, to determine whether Entercom designed and  
2 conducted a contest that was inherently dangerous. I would  
3 like to know from Entercom this morning, will they stipulate  
4 yes, that they did that? Will they stipulate?

5 JUDGE SIPPEL: Right now today?

6 MR. COUZENS: Yes.

7 MR. SOLOMON: We're not in a position to stipulate  
8 to anything today. But we're in a position to work very  
9 promptly with both parties to see what stipulations can be  
10 agreed to.

11 MR. COUZENS: Okay. There's the game.

12 JUDGE SIPPEL: Why is that not --

13 MR. COUZENS: And they have just --

14 JUDGE SIPPEL: -- surprising?

15 MR. COUZENS: -- been exposed. The game has just  
16 been exposed.

17 JUDGE SIPPEL: You blew them out of the water, Mr.  
18 Couzens. I don't think so. Listen, I'm sorry. I didn't,  
19 nobody, not everybody agrees with things that I say and do.  
20 But I, you've got the right to prepare and serve your  
21 interrogatories, okay. You're going to --

22 MR. COUZENS: Thank you, Your Honor.

23 JUDGE SIPPEL: -- get a status report. I'm going  
24 to get the status report at the end of January. And we'll  
25 take it from there. If it turns out that somebody's dragging

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1 their feet we can put shorter times on the responses to  
2 discovery. We can do a lot of things.

3 But I would hate to go into this case without  
4 exploring this possibility, which is the difference, almost  
5 the difference between heaven and hell. Because if we have  
6 to drag this stuff out it's not going to fun. And it's going  
7 to be expensive.

8 Anyway, that's, I've said my piece. Is there  
9 anything anybody else has to offer that I have to think about?

10 MR. SOLOMON: I have a couple of logistical issues  
11 to raise --

12 JUDGE SIPPEL: Yes, sir.

13 MR. SOLOMON: -- for Your Honor on substance. One  
14 issue is if you could include in your order something that  
15 permits the parties to file pleadings by ECFS, rather than in  
16 triplicate with your secretary?

17 MR. COUZENS: Oh, hurray, yes.

18 MR. SOLOMON: And then --

19 MR. COUZENS: Thank you.

20 MR. SOLOMON: See, we and Mr. Couzens agree. And  
21 then also, the parties can be served by email.

22 JUDGE SIPPEL: It's fine with me. Service by email  
23 is fine with me. You don't see any problem with this, do you?

24 MR. SOLOMON: The only thing I would just mention  
25 for the record is, at the Bureau's suggestion, which was a

1 good suggestion, we're working with the Bureau to develop a  
2 protective order for Your Honor's consideration.

3 And obviously we'll work with Mr. Couzens too. I  
4 don't know to what extent there will be confidential  
5 information. But to the extent there is, so that process,  
6 when we do get to discovery will be protected.

7 JUDGE SIPPEL: When is that going to be done, the  
8 protective order?

9 MR. SOLOMON: I don't think it will take long.  
10 We're working on a draft already in our firm that we'll share  
11 with our client, and share. And it's modeled on the  
12 protective order, as Bureau counsel suggested. It's modeled  
13 on the protective order in the MCLM case.

14 JUDGE SIPPEL: Good enough. Good enough. But  
15 please pay attention, turn your attention to that. Because  
16 I want to sign off on that before you have your gathering, and  
17 the first, you know, first meeting.

18 In other words, I don't want the meetings to get  
19 bogged down because all that's, you know, that's confidential  
20 and we don't have an order on that yet.

21 MR. SOLOMON: We will do it promptly. Although  
22 we're willing to meet before that. I don't think in our  
23 meetings there will be confidentiality issues.

24 MS. KANE: I can't imagine that will be an issue,  
25 Your Honor. It's only if it's going to be used for the public

1 record.

2 MR. SOLOMON: And we would like to start the  
3 meetings promptly. But we will get you the protective order  
4 as soon as we can.

5 JUDGE SIPPEL: Where are the meetings going to be?  
6 Do you want to alternate between venues?

7 MS. KANE: Your Honor, I'm confused about these  
8 meetings that you're proposing. I mean, I think at some point  
9 when we can obviously talk to Entercom's counsel as to who is  
10 going to propose the stipulations.

11 We're prepared at the moment. We've got our days  
12 already prepared. That would form the basis of many of those  
13 stipulations. But I think it's just, in the immediate it's  
14 only the matter of exchanging them, and seeing how parties  
15 react or not react.

16 So, I think, I guess the sort of meeting back and  
17 forth sounds to me a much more complicated process than the  
18 request for admissions would have been. But I don't foresee  
19 that it's going to be multiple meetings. It's going to be,  
20 here's the universe of stipulations we can agree to. And then  
21 the parties will have conference calls back and forth --

22 MR. SOLOMON: And conference --

23 MS. KANE: -- as necessary.

24 MR. SOLOMON: Conference calls are fine with us.  
25 I didn't mean to use the word meeting as some structured

1 thing. My point was, we'll have an informal back and forth.

2           And I think, as we discussed earlier, the first,  
3 constructive first step is for the Enforcement Bureau is to  
4 send us a draft of what they have for their admissions.  
5 Because that will help us to look at it. And to use Mr.  
6 Couzen's hypothetical, but if the Bureau, for example, there  
7 was 35 facts they wanted to stipulate as to Issue A, and we  
8 come up with a sentence that hypothetically is a conclusory  
9 sentence, then presumably that resolves that issue, and with  
10 issue B. And so, I think there will be discussions about  
11 that. And all I'm saying is we're committed to working  
12 informally with the Bureau, and not just contemplating that  
13 all we do is paper, and tell folks to talk. Let's talk and  
14 think --

15           JUDGE SIPPEL: I wasn't trying to, yes. I was  
16 thinking in a very generic way.

17           MR. ENGEL: If I could ask you, Your Honor, how  
18 does Entercom propose to advise the Bureau about the other  
19 materials? I mean, we don't want to see for the first time  
20 in written direct testimony all the other contests.

21           And how will that information flow? Because, it's,  
22 we're just in the dark. Without taking discovery we're  
23 completely at the mercy of Entercom to get that information  
24 before the written direct testimony.

25           JUDGE SIPPEL: Well, okay. Again, I'll ask Mr.

1 Solomon to respond to that. But before I do that. Again,  
2 you're going to get the, they're going to look, you get the  
3 first crack at this stipulation process. They're going to  
4 look at your discovery documents.

5           They don't have to be signed. I wouldn't sign them  
6 if I were you. But just send over what it is that you want  
7 to know about. And they'll, however you do it. I don't care  
8 whether you do it by intercom, phone calls, any way you want  
9 to do it, smoke dreams.

10           He's going to tell you, yes, no, or maybe. And  
11 from there you, that's the way these processes work. You do  
12 something here. You do a little something there.

13           You know, maybe you want to go, you know, what is  
14 it, Wilkinson Barker, they've got great coffee, I'll bet.  
15 This is, I know you, maybe you think I'm making light of it.  
16 I'm not. I'm not.

17           MS. KANE: Your Honor, this is a very extensive  
18 HDO. There's a lot of facts that are --

19           JUDGE SIPPEL: I agree with you.

20           MS. KANE: -- necessary if we were to file some  
21 sort of summary decision motion, or something of that nature.  
22 There would have to be facts that would need to be fleshed  
23 out.

24           So, I mean, I don't imagine us being able to sit  
25 around a room going through several hundred stipulations in

1 a particular, you know, situation. I feel like we should just  
2 provide some sort of timeframe by which each party exchanges  
3 stipulations, you know.

4 And maybe the Bureau starts with its stipulations.  
5 And maybe Entercom can identify today whether they're  
6 intending to provide stipulations on the issues that we don't  
7 know about yet.

8 JUDGE SIPPEL: Here's an idea. You've got you, you  
9 say you're, you've got your requests to admit pretty well  
10 ready to go?

11 MS. KANE: Yes, Your Honor. We could serve them  
12 today. Although we had made an agreement with Entercom not  
13 to file them, not to serve them before the holiday.

14 JUDGE SIPPEL: And anything else? Interrogatories?

15 MS. KANE: We're prepared to serve interrogatories  
16 and document requests next week.

17 JUDGE SIPPEL: Well why, okay. Well, let me think  
18 it through this way. You file it in the normal course of  
19 events as you ordinarily would do with the filing, and all  
20 that kind of stuff.

21 And I will then entertain a request by Entercom to  
22 delay responses pending, well, pending the stipulation  
23 processes, or whatever that might be.

24 MR. SOLOMON: Your Honor --

25 JUDGE SIPPEL: So, you'll have, your time will be



1 ticking. I'm going to delay your time. And you'll have the  
2 burden of responding to those interrogatories either directly,  
3 or whatever the document is, or in the stipulation process.

4 MR. SOLOMON: What I would suggest, Your Honor,  
5 more consistent with what we were talking about before. And  
6 again, I think it's more helpful if they give them to us  
7 informally, so we can do an informal process.

8 But if Your Honor decides to allow them to serve  
9 it, you should just stay the dates for any responses until we  
10 have the, at least the first status report.

11 JUDGE SIPPEL: Well, that's what I was trying to  
12 say.

13 MR. SOLOMON: Right. But rather than make us file  
14 a motion to stay.

15 JUDGE SIPPEL: Oh, oh, oh. I see. I see.

16 MR. SOLOMON: I mean, I thought it was more  
17 productive to have it done informally. But if Your Honor  
18 decides to have them formally serve it --

19 JUDGE SIPPEL: No. Well, I see the Bureau's point.

20 MR. SOLOMON: The only thing I would add with  
21 respect to Ms. Kane's reference to summary decision is that  
22 underscores, in my view, underscores why we have an incentive  
23 to work informally and productively with them, not just on the  
24 stipulations as to the contest issues, but as to the other  
25 issues.

1 I mean, it's presumably no secret to anybody that  
2 in the end our goal would be to develop a record on the public  
3 interest issues that the Bureau would support us in saying  
4 that that overrides the first set of issues, whether that's  
5 through summary decision, or through the hearing.

6 So, we have an incentive to share with them, once  
7 we have the information. Because we're going to want them on  
8 our side. That's going to be our goal.

9 MR. ENGEL: That's, so I think, to put the rubber  
10 to the road there, Your Honor, we would like stipulations then  
11 on the Issue H, which is the totality of circumstances clause.  
12 That's our operating in the dark discussion I had earlier.

13 So, we don't know about all the public interest  
14 events, and the meritorious programming that they're going to  
15 come forward with. And we're certainly welcome to look at the  
16 stipulations. But we don't want to give them stipulations on  
17 the contest with, negotiate those, and then put off for  
18 another day stipulations on all the other issues.

19 We want to roll that all in together and get that.  
20 I mean, I think that, isn't it putting the cart before the  
21 horse to say we'd all love to go to summary decision? But  
22 that's assuming we can, if we can do stipulations on those  
23 other programs, then --

24 MR. SOLOMON: We don't object to that down the  
25 road. We simply don't know our case at this point. So, we

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1 can't stipulate that we had the following amount of charitable  
2 events, or the following this or that, because we don't know.

3 But we're certainly open to, as part of this  
4 process with regular reports to Your Honor, when we know  
5 enough about our case to start stipulations as to programming.

6 But we're at the stage of literally meeting with  
7 the client, and brainstorming about former employees they  
8 should talk to who might be able to tell us things that will  
9 be relevant to our case.

10 JUDGE SIPPEL: Well, that makes sense to me,  
11 because then you'll have the specific outline of what they're  
12 looking for stipulation about, or some other form of proof.  
13 And we'll, we can stay, you know, as you say, stay your  
14 obligation to respond.

15 Right now I wouldn't want, I don't want to put a  
16 time limit on it. But I can always just pull a switch and  
17 give them a time limit if things aren't going fast enough.

18 Hold on just a second, please. It's, what is it,  
19 20 of 12? And we've been at this for a fair amount of time,  
20 almost two hours. I'd like to take a recess, so that  
21 everybody has an opportunity to pull themselves together. And  
22 we'll be back in 15 minutes. Okay?

23 MR. COUZENS: I want to talk to you, Your Honor.

24 JUDGE SIPPEL: We're off the record.

25 (Whereupon, the above-entitled matter went off the

1 record at 11:39 a.m. and resumed at 11:48 a.m.)

2 JUDGE SIPPEL: Please be seated. I've been  
3 reviewing this with my support staff here. And I'm going to  
4 reconsider what I've been trying to accomplish, and let the  
5 Bureau proceed in the normal course with its discovery.

6 But assuming it's something like, it will be a  
7 request to admit. For example, anything that can be readily  
8 admitted. And there's enough people at Entercom. And this  
9 may go to -- You are in house counsel for Entercom. Yes.

10 Preliminary information I'm sure can be obtained,  
11 or whatever. In any event, whatever can't be met, you're  
12 going to indicate that in your responses, that it can't be  
13 met, not enough time, we need more time. And that's an  
14 appropriate answer, for the first round anyway.

15 But at least, Ms. Kane is correct that she is  
16 shooting in the dark. And Mr. Engel also. Mr. Couzens is  
17 going to go with his own discovery anyway. So, why don't we  
18 just start it out that way?

19 And I will see that, you know, how that's  
20 proceeding. I'm still going to call for the status reports.  
21 And --

22 (Off the record comment)

23 JUDGE SIPPEL: The Bureau will then be, yes, I  
24 mean, the Bureau will be on a firmer ground. And at some  
25 point in time there's going to be certain things as this gets

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1 squeezed in. There will be certain opportunities to probably  
2 stipulate to something.

3 Now, I was, I'm really, I'm on the public interest  
4 issue. I think on the contest issue that's not going to be  
5 a problem with stipulating, I think.

6 MR. ENGEL: Your Honor --

7 JUDGE SIPPEL: We'll see how it goes.

8 MR. SOLOMON: It is our hope that we can be --

9 MR. ENGEL: Your Honor, may I be heard? So, I  
10 think a compromise might be that the Bureau serves the RFAs  
11 at the beginning of next week on Issues A through G. Those  
12 are the contest related clauses. And then we'll serve  
13 comprehensive, more comprehensive discovery on Issue H. And  
14 that's the totality of circumstances.

15 JUDGE SIPPEL: All right. All right.

16 MR. ENGEL: We think that greatly limits the case  
17 at the outset, and the burden on the parties. And we should  
18 be able to, hopefully, reach stipulations on Issues A through  
19 G anyway.

20 MR. COUZENS: Are you talking about only  
21 admissions?

22 MR. ENGEL: We'll serve only requests for  
23 admissions at this time on Issues A through G, which will be  
24 the basis of the stipulations I think.

25 And then our interrogatories and document requests,

1 as well as other requests for admission will be on Issue H.  
2 And we also plan to get those out next week.

3 We could, if there, because we are heading into the  
4 holiday season, if Entercom wants to agree right now to an  
5 extension, I think we'll, you know, happily consider that,  
6 agree to that. But we want to get that out.

7 MR. SOLOMON: Can I ask a question, Your Honor?

8 JUDGE SIPPEL: Go right ahead.

9 MR. SOLOMON: So, I'm a little confused about what  
10 you're proposing to do. So, you'd send us requests for  
11 admissions on Issues A through G. And you'd send us those  
12 today, I assume. And what else would you need?

13 MS. KANE: And then limit the discovery that we  
14 would serve, at least initially, to issues that reflected H.  
15 Many of the, what we talked about sort of off line.

16 And again, it may be that it's premature at this  
17 point to, because you don't know yet what the case is. And  
18 in terms of a, you know, a motion to extend the deadline, or  
19 things like that.

20 And we would be open. And obviously, Your Honor,  
21 you have the authority to do this, to extend the deadline for  
22 the request for admissions response. That is limited to ten  
23 days currently in the rules.

24 But in order for it to be comprehensive, and to be  
25 able to address many of the underlying issues from the HDO,

1 it may take them more time. And we recognize that.

2 Normally we would probably just grant them an  
3 extension. But pursuant, because it's pursuant to a rule it  
4 would have to come through you. So maybe prematurely we could  
5 agree that the parties could discuss that.

6 JUDGE SIPPEL: Well, how about something like the  
7 second week of January?

8 MS. KANE: For the request for admissions, Your  
9 Honor?

10 JUDGE SIPPEL: No. For the answers. For the first  
11 round of answers. What you --

12 MR. ENGEL: For the responses?

13 JUDGE SIPPEL: Yes.

14 MR. ENGEL: Yes. Including document requests and  
15 --

16 JUDGE SIPPEL: Well --

17 MR. ENGEL: -- interrogatories?

18 JUDGE SIPPEL: Whoa, whoa, whoa, whoa, whoa. We  
19 were talking about --

20 MS. KANE: That's for --

21 JUDGE SIPPEL: -- RFAs and interrogatories.  
22 Admission request --

23 MR. ENGEL: So --

24 JUDGE SIPPEL: -- is different.

25 MR. ENGEL: How about Friday, January 13th for RFA

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1 responses? Is that --

2 JUDGE SIPPEL: Friday, January 13th?

3 (Simultaneous speaking)

4 MR. SOLOMON: We're fine with that date.

5 MR. ENGEL: And we'll simultaneously work on  
6 stipulations. But it may be unnecessary.

7 JUDGE SIPPEL: Okay. But you have --

8 MR. COUZENS: Will the discovery fit into this  
9 then?

10 JUDGE SIPPEL: Hold on just a second. I'm going  
11 to get to you, Mr. Couzens. I want to be sure I understand  
12 what's coming in from the Bureau.

13 All right. RFAs. Now, what about interrogatories?  
14 Are you preparing interrogatories?

15 MS. KANE: We have interrogatories and document  
16 requests, Your Honor. But we would narrowly tailor those to  
17 just the issues for which we're in the dark.

18 Essentially, Issue H, which I estimate, it sounds  
19 like from what Mr. Solomon was talking about, they're trying  
20 to get to some of the back story on how they're going to show  
21 that they acted in the public interest --

22 JUDGE SIPPEL: Yes, yes, yes.

23 MS. KANE: -- for the last 20 years.

24 JUDGE SIPPEL: Yes, yes.

25 MS. KANE: Correct, Your Honor.



1 JUDGE SIPPEL: So --

2 MS. KANE: So, we would limit the initial discovery  
3 to that issue, presuming that the parties could reach  
4 something, you know, that all the parties would be comfortable  
5 with on the other issues.

6 MR. SOLOMON: So, I would just mention, Your Honor,  
7 I mean, I understand, and we're comfortable with the request  
8 for admissions. And I have no objection to them serving this  
9 additional information.

10 I do think it may be valuable, and most  
11 constructive for you to issue an order that just says they can  
12 serve them. There's no date at this point for a response, or  
13 the date is stayed until further report from the parties.

14 Because I do, I think requests for admissions  
15 hopefully won't interfere too much with the stipulation  
16 process. But I am concerned that we get into this process of  
17 having to answer questions about a case we haven't developed  
18 yet.

19 And so, if there's some mechanism, whether they can  
20 serve them, which at least lets us know what they're looking  
21 for. But stays the deadline, or doesn't set a deadline, or  
22 says the parties should come back with a deadline, or  
23 something like that.

24 I think preferably it would be to stay, and then  
25 report to you when we have this report in January, or some

1 date.

2 JUDGE SIPPEL: Well, I thought there was a two part  
3 approach. One was going to be Issues A through G --

4 MR. SOLOMON: Right.

5 JUDGE SIPPEL: -- which would be requests for  
6 admissions, or however I said that. That would be pretty easy  
7 for you to do.

8 MR. KIRK: And we agree with that. And we're  
9 comfortable with it.

10 JUDGE SIPPEL: Yes. Then we move into H. And what  
11 did you antic -- what did you propose in H?

12 MS. KANE: We would propose serving limited  
13 document requests and interrogatories on H. But with there  
14 at least being some timeframe by which the parties would be  
15 responsible for starting to develop their case.

16 Our concern, Your Honor, as we said earlier this  
17 morning, is waiting until January or February, or some delayed  
18 timeframe, when they finally turn to preparing their case.  
19 And the reality is, this case is ongoing, you know, this case  
20 is moving forward.

21 And although it does sound like Your Honor has some  
22 flexibility on the July 27th deadline, to take us at least to  
23 a start of the trial, there are necessary things that if we're  
24 going to have an admissions session sometime in July, we need  
25 to start taking place in, you know, early May.

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1 And so, it does truncate the Bureau's ability to  
2 develop the discovery on Issue H if we're not finding out any  
3 of what their story is until sometime mid spring.

4 JUDGE SIPPEL: Well --

5 MR. SOLOMON: And my concern, Your Honor, is -- I  
6 didn't mean to interrupt you. I'm sorry.

7 JUDGE SIPPEL: No. Go ahead.

8 MR. SOLOMON: My concern, Your Honor, if you step  
9 back and you reference the Comcast program carriage issues,  
10 where Judge Steinberg determined that it violated due process  
11 to rush the hearing too quickly. And ultimately the  
12 Commission eventually effectively affirmed that at a certain  
13 point.

14 We are concerned about due process issues here.  
15 Our hope is obviously to work them through. But we have a  
16 hearing designation order that says, prove that for the last  
17 20 years you've had good service to the community, focusing  
18 on that part, which is what they're focusing on, Issue H.

19 And to say to us, you have to figure out what your  
20 proof is in a month, because other, or two months, because  
21 otherwise that will make it difficult for the Bureau to do its  
22 discovery in a timely fashion.

23 To me the right answer to that is, as you've  
24 indicated before, you should monitor what we're doing to make  
25 sure that we're moving forward. And we commit to moving

1 forward, and to trying to keep the Bureau informed of where  
2 we are.

3 But not set an artificial deadline that we end up  
4 filing motions saying we didn't have time to develop our case.  
5 So, I would hope that we had some time on the front end to  
6 work in good faith to find these witnesses, and to develop  
7 them.

8 And as I mentioned, we're happy to inform the  
9 Bureau, inform, or let them know how we're doing on that.

10 JUDGE SIPPEL: Well, I think the Bureau is looking  
11 for more structure. So, if the, with some reasonable, I mean,  
12 I'm saying January 13th, which is pretty generous I think.

13 If they take the Issue H questions, and just do the  
14 best you can. And on certain of them you're going to have to  
15 say, you know, no information now, you know, some kind of a  
16 way of designating it that this is going to be pursued, but  
17 you can't answer it now. Would that satisfy you?

18 MR. ENGEL: Your Honor, the January 13th date is  
19 I think more than two and a half months out from when the HDO  
20 was released. I mean, there's been sufficient time to start  
21 to build a case to date.

22 That's, I mean, we're building in a cushion for the  
23 holidays, and some time here for the counsel for both parties  
24 to negotiate stipulations. But that's two and a half months  
25 out from when this case was --

1 MR. SOLOMON: Well, it does involve over 600,000  
2 hours of programming, over 160,000 hours of programming over  
3 19 years. And maybe if we had the January date for the RFAs,  
4 and A through G.

5 It makes sense to have the February date for the  
6 other discovery, so that we're actually in a position where  
7 hopefully we can provide them with some more useful  
8 information, and not being answering, still working on it.

9 JUDGE SIPPEL: Well yes. I mean --

10 MR. SOLOMON: In February?

11 JUDGE SIPPEL: No. I see his point. I see Mr.  
12 Solomon's point. This is a monumental task, even for a large  
13 firm with many people.

14 MS. KANE: We recognize that, Your Honor. But  
15 then, we're thinking of it obviously from November 1st, right,  
16 which is -- Obviously they have to build their case. But then  
17 they're going to present all that information to us.

18 And Mr. Solomon just said, we're talking about, you  
19 know, hours, and hours, and hours of programming. And  
20 potentially documents and witnesses that the Bureau has never  
21 seen, and hasn't had the opportunity to review.

22 And we're talking about truncating even more and  
23 more the timeframe in which the Bureau would have to review  
24 that information in order to prepare its case for an  
25 admissions session in mid-July.

1           So, unless that date is somehow waived, and we're  
2 not working within that timeframe, that's going to be a  
3 concern. And it will, I believe, unduly prejudice the  
4 Bureau's ability to prepare its case on Issue H the longer we  
5 delay this.

6           In any other case, Your Honor, there's the  
7 timeframe of the, RFAs are limited to ten days response time.  
8 And then after that point in time Your Honor usually issues  
9 an order that sets the close of discovery. So, discovery is  
10 open essentially from that ten day time period forward.

11           We're now taking that ten day time period and  
12 moving it to six weeks. So, they have ample opportunity in  
13 that timeframe. And in any other case they would have been  
14 forced to start responding to discovery, regardless of the  
15 complexity of these issues. It's the same. The cable  
16 carriage cases are dealt the exact same way in terms of  
17 discovery.

18           MR. SOLOMON: Your Honor, I would stress that, and  
19 I obviously recognize the Bureau needs time to put on its  
20 case. And we're not trying to prevent that. But Ms. Kane  
21 referred to any other case. This isn't any other case.

22           This is essentially a so-called death penalty case,  
23 with respect to the license. Based on our research in the  
24 last 20 years, since Section 309(k) of the Act was enacted,  
25 the Commission has designated two broadcast renewals for

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1 hearing.

2           One the licensee didn't show up. So it was  
3 effectively a default judgment against them. And there was  
4 one other case which in the end the Commission did renew the  
5 license for a short term, which was the case involving San  
6 Francisco.

7           So, this isn't any other case. This is a death  
8 penalty case, where the license of the station is at risk.  
9 And certainly it's the case that the Bureau's rights to put  
10 on its case are important. But we're the ones who face a  
11 taking of our property. And due process is essential to give  
12 us time to develop our case.

13           JUDGE SIPPEL: Well, I mean, you know, yes, I hear  
14 you. I hear you. And neither side's going to be deprived of  
15 their opportunity to try the case as the case should be tried.

16           But I'm just getting so frustrated with this.  
17 Because the, you're asking for the traditional type of  
18 discovery within a timeframe. And Mr. Solomon's side is  
19 saying that this case is so massive he can't do it.

20           MR. ENGEL: We're not, Your Honor, we're giving a  
21 pretty good extension we think on traditional discovery  
22 deadlines.

23           JUDGE SIPPEL: What is the extension?

24           MR. ENGEL: January 13th. Hold on.

25           MR. SOLOMON: We're comfortable --

1 MR. ENGEL: Hold on.

2 MR. SOLOMON: -- with January 13th for the RFAs.

3 What we would propose is a month after that for the --

4 JUDGE SIPPEL: H.

5 MR. SOLOMON: -- responses to interrogatories and  
6 documents on Issue --

7 JUDGE SIPPEL: Issue H.

8 MR. SOLOMON: -- H. And to the extent the Bureau  
9 needs more flexibility in follow-up discovery on that, we're  
10 open to that. We're not trying to take away their rights to  
11 respond to our case.

12 MR. ENGEL: Normally the interrogatories would be  
13 due 14 days after we serve them, the answers or objections.  
14 And we're stretching it out.

15 JUDGE SIPPEL: I told you why. This is the holiday  
16 season.

17 MR. COUZENS: That's fine.

18 JUDGE SIPPEL: I'm sorry. Mr. Couzens, you --

19 MR. COUZENS: You can order that. You can order  
20 that. You can waive those deadlines. Or they can be waived  
21 by stipulation normally. So, that's not a problem.

22 JUDGE SIPPEL: Back to the stipulations.

23 MR. COUZENS: Not the other deadline.

24 JUDGE SIPPEL: I mean, I just, I --

25 MS. KANE: Well, Your Honor, you were willing to

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1 have a status report on the 27th of January, or at the end of  
2 January. So, what if you extend their obligations to at least  
3 answer and/or object to the discovery that we're serving next  
4 week on Issue H by January 31st?

5 MR. SOLOMON: Yes. We're okay with that.

6 MS. KANE: And that gives them almost two months  
7 to start putting -- And they've had considerable time since  
8 the HDO's been released to start putting together their case.  
9 They may not be able to identify all the documents.  
10 But, you know, they should be in some position. Everybody's  
11 been aware of what the trial deadline was when the HDO was  
12 released. And we should all have been working within that  
13 recognition.

14 Obviously Your Honor has the discretion to move  
15 that, should you see appropriate. But at, you know, frankly,  
16 everybody's working with, right now is working within that  
17 timeframe, and to preparing this case for an admissions  
18 session in mid-July. So, we're looking at, you know, close  
19 of discovery by at the minimum, May.

20 JUDGE SIPPEL: Well, if you take the size of this  
21 case, in terms of this issue H, what difference does that  
22 make? You can only do so, you can do what you can do. You  
23 can't do more than you can do.

24 MR. SOLOMON: And I would add, Your Honor, that  
25 while we could object by that date, you know, even a couple

1 more weeks into mid-February minimizes the degree to which  
2 we're likely to object.

3           If you set a date and say, we're willing to agree  
4 to the Bureau's concept that there be a date for us to  
5 respond. But we would suggest it be in mid-February,  
6 approximately 30 days after the prior date. So that at least  
7 if we're making, we minimize the number of objections, and  
8 there's more likelihood that we can give the Bureau  
9 substantive answers.

10           JUDGE SIPPEL: Okay. I'm ready to go on this. I'm  
11 going to come back to Mr. Couzens. Because I'm just focusing  
12 on this one right now. I've got to check the calendar here,  
13 what these dates are. So, it was January 13th. That's on a  
14 Friday. Okay. And let me see. We'll go to February 10th on  
15 Issue H.

16           And if I have to give more time at the other end,  
17 so be it. Nobody's going to be denied their right to a fair  
18 trial. Okay. Now, Mr. Couzens.

19           MR. COUZENS: Well, we don't need to jump ahead of  
20 a convoy, or the procession, or whatever this is. So, how  
21 about if our responses were due by agreement on January the  
22 13th also? On the interrogatories.

23           JUDGE SIPPEL: That strike you okay?

24           MR. SOLOMON: That's fine, Your Honor.

25           JUDGE SIPPEL: But you're still limited to 25.

1 MR. COUZENS: Yes, sir.

2 JUDGE SIPPEL: Okay. Okay. Is that all right?

3 MR. ENGEL: We're still doing a joint status  
4 report, Your Honor?

5 JUDGE SIPPEL: Well, probably no. A lot of things.  
6 We could kick that over to February. How's that?

7 MR. SOLOMON: I think that makes more sense, after  
8 the February --

9 JUDGE SIPPEL: Yes. There's a lot of things going  
10 on in January. So, February the, well, say it's the 28th.  
11 Keep away from those 13 dates. Okay. Is there anything else  
12 we need to do?

13 MR. SOLOMON: No. We're all set.

14 JUDGE SIPPEL: All right. Then we're in recess  
15 until my next call. And everybody enjoy Thanksgiving.

16 (Chorus of thank you)

17 JUDGE SIPPEL: We're off the record.

18 (Whereupon, the above-entitled matter went off the  
19 record at 12:08 p.m.)

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C E R T I F I C A T E

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Docket No. (if applicable)

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\_\_\_\_\_  
Place of Hearing

November 22, 2016

\_\_\_\_\_  
Date of Hearing

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